1 CITY OF KANNAPOLIS, NC 2 BOARD OF ADJUSTMENT 3 Minutes of Regular Meeting 4 Tuesday, December 1, 2015 5 6 The Board of Adjustment met on Tuesday, December 1, 2015 at 6:00 PM at the Kannapolis 7 Train Station, 201 South Main Street, Kannapolis, North Carolina. 8 9 **Board Members Present:** Jeff Parker, Chairman 10 Jonathan Farmer, Vice-Chairman 11 Andrew Baker 12 Colby Meadows 13 Scott Wilson 14 James Palmer 15 16 17 City Attorney: Walter Safrit, II 18 **Board Members Absent:** Boyd Hardin 19 Ryan Craft 20 21 22 Visitors: None 23 Zachary D. Gordon, AICP, Planning Director **Staff Present:** 24 25 David Jordon, IT 26 27 **Recording Secretary:** Pam Scaggs 28 CALL TO ORDER 29 30 Board Chairman Jeff Parker called the meeting to order at 6:02 P.M. 31 ROLL CALL AND RECOGNITION OF QUORUM Recording Secretary Pam Scaggs called the roll. The presence of a quorum was recognized by 32 33 34 Chairman Parker. 35 APPROVAL OF AGENDA Chairman Parker asked for a motion to approve the agenda which was made by Mr. Farmer, 36 37 38 seconded by Mr. Meadows and the motion was unanimously approved. APPROVAL /CORRECTION OF MINUTES 39 Chairman Parker requested a motion to approve the November 10, 2015 minutes. Mr. Palmer 40 41 stated that he was not present at the November 10 meeting but is listed as present. Mr. Baker stated that he was listed as being absent but was present. Chairman Parker asked that this error be 42 43 corrected and then asked for a motion to approve the minutes with the requested changes which was made by Mr. Farmer, seconded by Mr. Palmer and the motion was unanimously approved. 44 45 FOOD LION - CERTIFICATE OF NONCONFORMITY ADJUSTMENT (BOA-2015-15) 46 47 Planning Director, Zac Gordon, gave a PowerPoint presentation regarding a request for a Certificate of Nonconformity Adjustment (CONA). The applicant, Atlantic American Properties, 48 49 representing Food Lion grocery store, is requesting a CONA to allow for a wall mounted sign measuring 206 square feet, where a maximum of 120 square feet is allowed. The property is 50

located at 358 Oak Avenue Mall Drive and is further identified as Cabarrus County PIN # 5613-59-3915. The property is zoned CC – Center City District. Mr. Gordon stated that notice of the public hearing had been mailed to adjacent property owners and appropriate signage posted on the site

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Mr. Gordon directed attention to the aerial and current zoning maps for the subject property as well as the Future Land Use Map. Mr. Gordon stated that the current wall sign measures approximately 600 square feet, which is considered legally "non-conforming", because it was installed prior to the adoption of the current sign limitation standards set forth in Article 12, Table 12.1-3 of the Unified Development Ordinance (UDO). Mr. Gordon noted that if the Board approves BOA-2015-15, a CONA should be issued.

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16 17 Mr. Gordon reminded the Board that Article 13 (Nonconforming Uses & Structures, Vested Rights) of the UDO is intended to address situations where pre-existing, nonconforming issues were present (i.e.: structures, uses, signs) prior to zoning which was enacted in 1988. Mr. Gordon stated that Section 13.1.6.1 of the UDO states: "A Certificate of Nonconformity Adjustment shall be required to enlarge, expand or otherwise alter any Nonconforming Use or Structure as set forth in this Section 13.1. A Certificate of Nonconformity Adjustment shall be issued by the Board of Adjustment subject to the requirements of this section"

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- Section 13.1.6.3 outlines criteria that need to be addressed when considering the CONA request:
  - 1. Noise Does the nonconformity create noise above and beyond levels considered normal to the area? Staff response: There are no anticipated noise impacts associated with the proposed sign.
  - 2. Traffic Does the nonconformity generate or have the potential to generate a significantly higher volume of traffic than surrounding land use? Staff response: The proposed sign will have no impact on the volume of traffic to and from the site.
  - 3. Other measurable, physical effects Does the nonconformity generate any other negative effects including but not limited to: dust, air pollution, foul smell, etc.? Staff Response: No negative effects are anticipated to result from the proposed sign.
- 4. Surrounding property values Does the nonconformity detract from the prevailing property values? Staff Response: The proposed sign should not detract from (and perhaps enhance) adjoining property values.
  - 5. Aesthetics Does the nonconformity compliment or detract from the overall aesthetic character of the area? Staff Response: The proposed sign should complement the overall aesthetic character of the area.

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## RECOMMENDATION

42 Mr. Gordon stated that the staff recommendation is based upon an assessment of the criteria 43 (noted above) found in Section 13.1.6.3 of the UDO and calls for an approval of the CONA for a 44 wall sign measuring 206 square feet, consistent with the sign plan submitted as part of the 45 applicant's CONA request.

 Should a CONA be approved, the Board may impose such reasonable conditions as will ensure that the use of the property to which the certificate applies will be as compatible as practicable with the surrounding properties. Any approval granted will "run with the land" and subject all future property owners to the same restrictions.

# **ACTIONS REQUESTED**

Mr. Gordon stated that after conducting a Public Hearing, the Board should consider all facts and testimony and render a decision accordingly to affirm or deny the issuance of a CONA. Staff is requesting the following Board action:

- Motion to accept the City's exhibit's into record
- Motion to approve/revise findings of fact proposed by Planning staff
- Motion to approve, approve with conditions or deny the issuance of the CONA

There being no questions from the Board or members of the public present, Chairman Parker asked for a motion to accept the City's exhibits into the record which was made by Mr. Farmer, seconded by Mr. Meadows and the motion was unanimously approved.

Chairman Parker asked for a motion to approve the findings of fact as presented which was made by Mr. Farmer, seconded by Mr. Meadows and the motion was unanimously approved.

Chairman Parker asked for a motion to approve the issuance of the CONA which was made by Mr. Palmer, seconded by Mr. Farmer and the motion was unanimously approved.

# ORDERS FOR APPROVAL

Sheila McGuiness – Variance from City Zoning Ordinance (BOA-2015-12) – This Order is for approval of a Variance from the UDO. The proposed Variance will allow for a minimum year yard setback of 19 feet where a minimum of 25 feet is required. The property is located at 813 Lantern Way and is further identified as Cabarrus County PIN # 5612-26-6338. The property is zoned RM-2 – Residential Medium Density.

John Savage – Conditional Use Permit (BOA-2015-13) – This Order is for approval of a Conditional Use Permit (CUP). The proposed CUP will allow for construction of an assisted living facility within the AG – Agricultural District. The properties are located on Kannapolis Parkway near the intersection of Buddy Lane and are further identified as Cabarrus County PIN #'s 5603-13-1533 and 5603-03-8847. The property is zoned AG – Agricultural District.

Chairman Parker requested a motion to approve both orders as presented, which was made by Mr. Farmer, seconded by Mr. Meadows and the motion was unanimously approved.

## 2016 MEETING DATES

Chairman Parker reminded the Board that Mr. Gordon asked that the regular scheduled Board meetings be moved from the first Tuesday to the third Tuesday of the month and asked if anyone had any issues with the date change. There were no questions or additional comments regarding the 2016 schedule. Mr. Parker reminded the Board that January's meeting will be held in the new City Hall.

## OTHER BUSINESS

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- Mr. Gordon noted that the City Council voted at their November 23<sup>rd</sup> meeting to remove Thomas 2
- Van Etten from the Board per the by-laws which state that a member shall not miss more than 3
- 4 three consecutive meetings. Mr. Gordon also stated that Mr. Van Etten responded and conceded
- 5 that his schedule had become more hectic and apologized for not stepping down earlier. Mr.
- 67 Gordon stated that Planning would work with Bridgette Bell to advertise for a replacement.
- Mr. Gordon confirmed that regular scheduled Board meetings will be held in the new building 8
- beginning January 19, 2016. He also noted that there will be a Dedication Ceremony of the new 9
- building on Monday, December 14 beginning at 4:00 PM followed by a brief City Council 10
- 11 meeting and building tours. 12
- 13 Chairman Parker asked if a replacement for Ms. Watts position has been found yet? Mr.
- 14 Gordon responded that an advertisement has been posted and that he will begin the interviewing
- process as soon as possible.
- 15 16 Chairman Parker asked if there were any items on next month's agenda? Mr. Gordon responded 17
- that there wasn't anything yet but that the deadline to submit wasn't until the following week so 18
- there was still time to receive submissions. Chairman Parker stated there was some discussion at 19
- last month's meeting regarding training and asked if next month would be a good opportunity to 20
- complete that training? Mr. Gordon thanked Chairman Parker for the reminder and responded 21
- "yes" if the agenda remains clear, they would complete training and if not, they would complete 22
- 23 24 on another regular scheduled meeting day that had a light agenda.
  - City Attorney, Walter Saffrit II, stated that the Cox case would be heard by the Superior Court
- on Monday, December 7, 2015. Attorney Saffrit noted that one of the options the court may 26
- pursue is to remand the case back to the Board for additional findings, or similar action. 27 28

#### 29 **ADJOURN**

- There being no further questions or comments, Chairman Parker made a motion to adjourn which was seconded by Mr. Palmer and the motion was unanimously approved.
- The meeting was adjourned at 6:20 PM on Tuesday, December 1, 2015.

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Pam Scaggs, Clerk Board of Adjustmen

Jeff Parker, Chairman Board of Adjustment

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